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17 APR 2007

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New York, New York 10017

In re Application of  
AEBI et al.  
Application No.: 10/538,950  
PCT No.: PCT/CH02/000707  
Int. Filing: 17 December 2002  
Priority Date: None  
Attorney Docket No.: LUS-16100  
For: INTERVERTEBRAL IMPLANT

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DECISION ON PETITION  
&  
NOTIFICATION OF DEFECTIVE  
DECLARATION

This decision is issued in response to applicants' 01 March 2007 "Reply to Decision on Petition" treated herein as a renewed petition under 37 CFR 1.47(a). No petition fee is required.

**BACKGROUND**

The procedural background for this application was set forth in detail in the decisions mailed herein on 29 November 2006 and 12 February 2007.

The decision mailed 12 February 2007 indicated: (1) the petition under 37 CFR 1.47 was dismissed as moot since the declaration filed 25 January 2007 was executed by the named inventor, the previous nonsigning inventor (Max Aebi); and (2) the declaration executed by the remaining inventors was defective, in that, the declaration included non-translated foreign language handwritten thereon. (See 37 CFR 1.69)

On 01 March 2007, applicants filed the materials considered herein as a renewed petition.

**DISCUSSION**

**A. *Renewed Petition under 37 CFR 1.47(a)***

As stated above, the renewed petition filed 25 January 2007 included a declaration executed by Max Aebi, the previously non-signing inventor. Accordingly, the renewed petition under 37 CFR 1.47(a) was appropriately dismissed as moot.

*B. Defective Declaration (filed 01 March 2007)*

The 01 March 2007 submission included an executed declaration. However, this declaration is not in compliance with 37 CFR 1.497. Specifically, there is an issue as to whether the declaration has been properly executed. The declaration filed with the petition includes duplicate sheets of page 2. It is unclear if the inventors were presented with only Page "2", in which case the execution would be improper, or if they were presented with a complete declaration for signing, but counsel subsequently compiled the declaration into the single document, which is improper. (See MPEP 201.03(B): "Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration"). Copy of the complete declaration executed by each of the inventors is required before the declarations can be accepted under 37 CFR 1.497(d).

Additionally, petitioner has not provided an executed declaration(s) in compliance with 37 CFR 1.497 by the fifth inventor (Robert Mathys Jr.) and sixth inventor (Paul Pavlov).

**CONCLUSION**

For the reasons above, the renewed petition under 37 CFR 1.47(a) is **DISMISSED** as MOOT.

A proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). A proper response must include an oath/declaration in compliance with 37 CFR 1.497(a)-(b).

Any further correspondence with respect to this matter should be addressed to:  
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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